

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ANTWAN SLATER,

Plaintiff,

v.

Case No. 07-C-841

JEANANNE GREENWOOD and
RICHARD HEIDORN,

Defendants.

MEMORANDUM AND ORDER

Plaintiff Slater, who is proceeding pro se, lodged a civil rights complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. Plaintiff is currently incarcerated at Green Bay Correctional Institution.

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner plaintiff is required to pay the statutory filing fee of \$350.00 for a federal lawsuit. If a prisoner does not have the money to pay the filing fee up front, he or she can request leave to proceed *in forma pauperis* in order to pay the fee over time. To proceed with an action *in forma pauperis*, the prisoner must complete a petition and affidavit to proceed *in forma pauperis* and return it to the court with a certified copy of the prisoner's trust account statement showing transactions for the prior six months. The court then assesses and, when funds exist, collects from the plaintiff at the time the action is filed an initial partial filing fee of

twenty percent of the average monthly deposits to or the average monthly balance in the prisoner's trust account for the six-month period immediately preceding the filing of the complaint.¹

In this case, the plaintiff has filed a certified copy of his prison trust account statement for the six-month period immediately preceding the filing of his complaint. He also filed the required affidavit of indigence. Further, he has been assessed and has paid an initial partial filing fee.

Upon review of the trust account statement and affidavit, I am satisfied that plaintiff is unable to pay the statutory filing fee in this case. Leave to proceed *in forma pauperis* therefore will be granted.

Next, the court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1)-(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at 327.

A complaint, or portion thereof, should be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim or claims that would entitle him to relief. *Hishon v. King & Spalding*, 467 U.S. 69, 73

¹In no event will a prisoner be prohibited from bringing a civil action because he or she has no assets and no means by which to pay the initial partial filing fee. 28 U.S.C. § 1915(b)(4).

(1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, *Hosp. Bldg. Co. v. Trs. of Rex Hosp.*, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff's favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

The court is obliged to give the plaintiff's pro se allegations, however inartfully pleaded, a liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege: (1) that he was deprived of a right secured by the Constitution or laws of the United States, and (2) that the deprivation was visited upon him by a person acting under color of state law. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980).

Plaintiff alleges deliberate indifference to his medical needs. He asserts that he had a lump under his eye and filed an HSU request. He was soon seen by a nurse but did not receive effective treatment. Some two weeks later, with the eye still uncured, plaintiff informed a "white shirt" of his medical needs. The officer called HSU and the plaintiff was promptly seen by the doctor, presumably defendant Dr. Heidorn. He received "some pills and eye drops" from HSU, but these did not clear up the problem either. He was again seen by Dr. Heidorn, who scheduled him for surgery at the Green Bay Eye Clinic in short order. Heidorn apparently told him the surgery would take place on May 17, but it actually occurred on June 4. Heidorn has recently told plaintiff that he will need another surgery to fix the problem.

Plaintiff asserts that this shows deliberate indifference on the part of Dr. Heidorn as well as Jeananne Greenwood, the HSU manager. It does not. To show deliberate indifference, even at the pleading stage, a plaintiff must assert that a defendant knowingly disregarded an obvious risk of

serious injury. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Here, all the complaint suggests is that the plaintiff perhaps disagrees with the treatment he received or feels that it was not expeditious enough. Yet he has stated that he was seen by a nurse and a doctor on several occasions, and was promptly scheduled for surgery to correct his problem. This all occurred within the space of two months, a time period commensurate with what individuals outside of prison experience when seeking medical treatment. Moreover, having a lump under one's eye is not the sort of grave or life-threatening medical condition that demands instantaneous medical attention; a plaintiff in such circumstances must have some claim that the delay in treatment caused additional serious harm. *Williams v. Liefer*, 491 F.3d 710, 714 (7th Cir. 2007). Accordingly, because the complaint fails to state a claim for deliberate indifference, the complaint will be dismissed.

THEREFORE, IT IS ORDERED that plaintiff's request to proceed *in forma pauperis* is **GRANTED**.

IT IS ORDERED that the Secretary of the Wisconsin Department of Corrections or his designee shall collect from the plaintiff's prison trust account the balance of the filing fee by collecting monthly payments from the plaintiff's prison trust account in an amount equal to twenty percent of the preceding month's income credited to the prisoner's trust account and forwarding payments to the clerk of the court each time the amount in the account exceeds \$10.00 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action.

IT IS FURTHER ORDERED that this action is dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1) for failure to state a claim upon which relief may be granted.

IT IS ORDERED that the clerk of court document that this inmate has brought an action that was dismissed under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1) for failure to state a claim upon which relief may be granted.

IT IS ORDERED that the clerk of court document that this inmate has incurred a "strike" under 28 U.S.C. § 1915(g);

IT IS FURTHER ORDERED that the clerk of court enter judgment accordingly.

I FURTHER CERTIFY that any appeal from this matter would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3) unless the plaintiff offers bonafide arguments supporting his appeal.

Dated this 2nd day of October, 2007.

s/ William C. Griesbach
William C. Griesbach
United States District Judge